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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/899,962
Filing Date: July 06, 2001
Appellant(s): Ali N. Saleh, et al.

Cyrus F. Bharucha
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 02, 2008 appealing from the Office action mailed April 09, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of invention contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal:

- Iwata, (6,026,077) issued on February 05, 2000.
- Houji, (5,832,197) issued on November 03, 1998.
- Ebata et al., (5,708,209) issued on March 16, 2004.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 1-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iwata, U.S. Patent No. 6,026,077 (hereinafter Iwata), in view of Houji, U.S. Patent No. 5,832,197 (hereinafter Houji), and further in view of Ebata et al., United States Patent Number 6,708,209 (hereinafter Ebata).

2. With respect to claims 1, 9, 17, 25, 33, 41, 44, and 46, Iwata teaches a method for restoring a path in a communication system between zones [see abstract and fig.1] comprising:

- establishing an inter-zone link between a first border node (**A**) of a source zone [i.e. sub-networks, **701** and/or peer group, **PG-A**] and a second border node (**D**) of a destination zone [i.e. sub-networks, **704**] [fig.1];
- identifying an inter-zone link failure between the source zone and the destination zone [col.10, ln.66 - col.11, ln.27 and col.12, lns.40-62];
- identifying a pre-planned alternative route between the source zone and the destination zone [i.e. previously determine an alternate path, see abstract and fig.1];
- informing a node in the destination zone of alternative route [fig.1];
- informing a node in the source zone of alternative route [fig.1]; and
- providing communication between the destination zone and the source zone via the preplanned alternative route [fig.4].

However, Iwata does not explicitly show wherein the pre-planned alternative route meets class of service requirements between the source zone and the destination zone.

In a method for restoring a path, Houji suggests or discloses wherein the pre-planned alternative route meets class of service requirements between the

source zone and the destination zone [see abstract, figs.1-2, and col.2, ln.46 - col.4, ln.38].

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Iwata in view of Houji by the pre-planned alternative route meets class of service requirements between the source zone and the adjacent destination zone because this feature performs alternate routing and avoids congestion without interrupting a connection [Houji, col.1, ln.28]. It is for this reason that one of ordinary skill in the art at the time of the invention would have been motivated to modify in order to select one of the alternate virtual paths according to their priorities and switches the route to the selected virtual path without interrupting the connection [Houji, col.1, lns.23-25].

Further, Iwata does not explicitly show where the inter-zone link meets class of service requirements between the source zone and the destination zone. In a communication method, Ebata suggests or discloses where the inter-zone link [i.e. inter-organization link] meets class of service requirements [i.e. QoS control using a policy of the policy servers] between the source zone and the destination zone [col.7, lns.1-63; col.17, lns.37-58; and col.18, lns.17-21].

Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Iwata in view of Houji, and further in view of Ebata by meeting class of service requirements between the source zone and the destination zone because this feature can provide a quality-guaranteed path extending to a plurality of networks which has a quality guaranteed the

policies [Ebata, col.2, lns.23-27]. It is for this reason that one of ordinary skill in the art at the time of the invention would have been motivated in order to be guaranteed in its own network for an inter-network communication [Ebata, col.2, lns.5-7].

3. With respect to claims 2, 10, 18, 26, and 34, Iwata further suggests routing the pre-planned alternative route through a transit zone [fig.1].

4. With respect to claim claims 3, 6, 11, 14, 19, 22, 27, 30, 35 and 38, Iwata further teaches requesting new paths to be established between zones [i.e. setting up the alternate path, see abstract].

5. With respect to claims 4-5, 7-8, 12-13, 15-16, 20-21, 23-24, 28-29, 31-32, 36-37, and 39-40, Iwata does not explicitly show the pre-planned alternative route is configured based on class of service requirements.

In a method for restoring a path in a communication system, Houij discloses the pre-planned alternative route is configured based on class of service requirements [see abstract and fig.1].

Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Iwata in view of Houij by the pre-planned alternative route meets class of service requirements between the source zone and the adjacent destination zone because this feature performs

alternate routing and avoids congestion without interrupting a connection [Houji, col.1, ln.28]. It is for this reason that one of ordinary skill in the art at the time of the invention would have been motivated to modify in order to select one of the alternate virtual paths according to their priorities and switches the route to the selected virtual path without interrupting the connection [Houji, col.1, lns.23-25].

6. With respect to claims 42-43 and 45, Iwata further teaches the processor is further configured to:

- identify an intra-zone failure within at least one of said source zone and said adjacent destination zone [i.e. link state database **102**, figs.2-6]; and
- dynamically identify an alternative route using a distributed restoration process [col.7, ln.60 - col.8, ln.61].

(10) Response to Argument

In the remarks, applicant argued in substance that

I. The cited portions of Iwata, Houji, and Ebata fail to disclose an inter-zone link that meets class of service requirements between a source zone and a destination zone.

In response to Appellant's argument that t**he cited portions of Iwata, Houji, and Ebata fail to disclose an inter-zone link that meets class of service requirements between a source zone and a destination zone**, the examiner respectfully disagree. Ebata discloses where the inter-zone link [=

inter-organization link] meets the class of service requirements [= QoS control] between the source zone and the destination zone [col.17, ll.1-63, col17, ll.37-58, and col.18, ll.17-21]. Therefore, the combination of the Iwata, Houji, and Ebata disclose claimed feature as show in the above.

II. The cited portions of the references fail to disclose a pre-planned alternative route that also meets the class of service requirements between the source zone and the destination zone.

In response to Appellant's argument that the cited portions of the references fail to discloses a pre-planned alternative route that also meets the class of service requirements between the source zone and the destination zone, the examiner respectfully disagree. Houji discloses a pre-planned alternative route that also meets the class of service requirements [= QoS parameter of the selected path be increased from the minimum level to a level specified by the connection request, see abstract] between the source zone and the destination zone [see abstract, figs.1-2, and col.2, ll.46 through col.4, ll.38]. Therefore, the combination of the references disclose claimed feature as show in the above.

III. The cited portions of the references fail to disclose identifying an intra-zone failure in addition to an inter-zone link failure.

In response to Appellant's argument that the cited portions of the references fail to disclose identifying an intra-zone failure in addition to an inter-

zone link failure, the examiner respectfully disagree. Iwata discloses identifying an intra-zone failure [col.10, ll.66 through col.11, ll.27 and col1.12, ll.40-62] in addition to an inter-zone link failure [= automated failure restoration function in both inter-zone link i.e. connecting border node A & border node B and intra-zone link i.e. within peer group, see figs.16-17]. Therefore, the combination of the references disclose claimed feature as show in the above.

IV. The cited portions of the references fail to disclose a source zone and a destination zone that execute separate copies of a topology distribution algorithm.

In response to Appellant's argument that the cited portions of the references fail to disclose a source zone and a destination zone that execute separate copies of a topology distribution algorithm, the examiner respectfully disagree. Iwata discloses a source zone [= peer group and/or sub-network, 701] and a destination zone [= peer group and/or sub-network, 704] that execute separate copies of a topology distribution algorithm [= separate and/or different subnet may have separate topology, see fig.17]. Therefore, the combination of the references disclose claimed feature as show in the above.

V. The Final Office Action fails to establish a motivation for the proposed combination of Iwata and Houji.

In response to Appellant's argument that Final Office Action fails to establish a motivation for the proposed combination of Iwata and Houji, the examiner respectfully disagree. The Appellant obviously attacks references individually without taking into consideration based on the teaching of combinations of references. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. Se In re Keller, 642F. 2d 413, 208 USPQ 871 (CCPA 1981); In re Merck & Co., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Further, the Examiner recognizes that obviousness can only be established by combining or modifying the teaching of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See In re Fine, 837 F.2d 1071, 5 USP Q2d 1596 (Fed. Cir. 1988) and In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would have been obvious to one of ordinary skill in the art at the time of the invention was made modify Iwata in view of Houji by the pre-planned alternative route meets class of service requirements between the source zone and the adjacent destination zone because this feature performs alternate routing and avoids congestion without interrupting a connection [Houji, col.1, ll.28]. It is for this reason that one of ordinary skill in the art at the time of the invention would have been motivate in order to select one of the alternate virtual paths according to the priorities and switches the route to the selected virtual path without

interrupting the connection [Houji, col.1, ll.23-25]. Therefore, the combination of Iwata and Houji establish a motivation as show in the above.

VI. The Final Office Action fails to establish a motivation for the proposed combination of Ebata with either Iwata or Houji.

In response to Appellant's argument that **Final Office Action fails to establish a motivation for the proposed combination of Ebata with either Iwata or Houji**, the examiner respectfully disagree. The Appellant obviously attacks references individually without taking into consideration based on the teaching of combinations of references. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. Se In re Keller, 642F. 2d 413, 208 USPQ 871 (CCPA 1981); In re Merck & Co., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Further, the Examiner recognizes that obviousness can only be established by combining or modifying the teaching of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See In re Fine, 837 F.2d 1071, 5 USP Q2d 1596 (Fed. Cir. 1988) and In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would have been obvious to one of ordinary skill in the art at the time of the invention was made modify Iwata in view of Houji by the pre-planned alternative route meets class of service requirements between the source zone and the

adjacent destination zone because this feature performs alternate routing and avoids congestion without interrupting a connection [Houji, col.1, ll.28]. It is for this reason that one of ordinary skill in the art at the time of the invention would have been motivate in order to select one of the alternate virtual paths according to the priorities and switches the route to the selected virtual path without interrupting the connection [Houji, col.1, ll.23-25]. Further, it would have been obvious to one of ordinary skill in the art at the time of the invention was made modify Iwata in view of Houji, and further in view Ebata by meeting class of service requirements between the source zone and the destination zone because this feature can provide a quality-guaranteed path extending to a plurality of networks wich has a quality guaranteed the policies [Ebata, col.2, ll.23-27]. It is for this reason that one of ordinary skill in the art at the time of the invention would have been motivate in order to be guaranteed in its own network for an inter-netrk communication [Ebata, col.2, ll.5-7]. Therefore, the combination of Ebata with either Iwata or Houji establish a motivation as show in the above.

(11) Evidence Appendix

None

(12) Related Proceedings Appendix

None

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Nghi V. Tran
Patent Examiner
Art Unit 2151

July 17, 2008

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